



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 5

103 South Gay Street, 8th Floor

Baltimore, MD 21202-4061

Telephone: (410) 962-2822

Facsimile: (410) 962-2198

April 18, 2006

Mr. James J. Cusack
One Tampa City Center #1825
Tampa, FL 33602

Civista Health
Case 5-RD-1392

Dear Mr. Cusack:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, as amended, among certain employees of Civista Medical Center, has been carefully investigated and considered.

Decision to Dismiss: Based on the investigation, I have concluded that further proceedings are not warranted, and I am dismissing the petition because the Petitioner did not timely submit an adequate and sufficient showing of interest in support of the petition during the open window period of the filing the petition, as more fully explained below.

On March 29, 2006, the Petitioner filed the instant decertification petition, and the Region served copies of it, by letter, on the Employer and the Intervenor, incumbent representative SEIU Local 1199. Although the letter to the Employer requested a list of employees in the petitioned-for unit, such a list was not immediately provided. On April 5, the Intervenor submitted to the Region a payroll list furnished to it by the Employer. On the same date, the Intervenor asserted that a Memorandum of Agreement reportedly executed by representatives of the Intervenor and Employer would bar the processing of the instant petition.

The list submitted by the Intervenor contained 204 names. After a check of the showing of interest, the Petitioner was advised by the Board agent that she may not have tendered an adequate showing with the petition. In accordance with NLRB Statements of Procedure Section 101.17 and Casehandling Manual Sections 11003.1, 11024.1, and 11030.1, therefore, the Petitioner was given an additional 48 hours to submit an adequate and sufficient showing of interest.

At the April 12 hearing, the parties agreed to the following facts: The Employer and Intervenor executed a Memorandum of Agreement on March 27, which provided by its terms that the agreement must be ratified by the membership as a condition precedent to its effectiveness. A

ratification vote was scheduled and held on March 29 from 9:00 a.m. to 9:00 p.m. After the polls were closed at 9:00 p.m., the ballots were counted and the overwhelming majority voted in favor of ratification. By e-mail dated March 30, the Intervenor notified the Employer that the agreement was ratified. At the hearing, the Intervenor argued the Petition was untimely filed, because the last date on which the Petition could have been filed was March 28, the day prior to the date on which ratification was accomplished. *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958). To the contrary, the Petitioner argued that since notice of ratification was not provided to the Employer until March 30, the contract did not become a bar until March 30 and, therefore, the March 29 petition was timely filed. Before deciding the issue presented at the hearing, however, I must first determine whether under either circumstance, based on these undisputed facts, the Petitioner has provided an adequate and sufficient showing of interest.

Based on the Employer's payroll list, I find there were 204 employees in the unit involved herein for the payroll period ending immediately before the filing of the petition, and that the Petitioner lacked an adequate showing of interest at the time the petition was filed and at the latest possible time the contract became a bar to the processing of the petition, on March 30.

In cases in which a petition is filed with a numerically insufficient showing of interest, such as here, the Petitioner is provided an additional period of time, usually 48 hours, to provide the requisite showing of interest. In no event, however, may the showing of interest be provided later than the last day on which the petition may be timely filed. NLRB Statements of Procedure Section 101.17; *Mallinckrodt Chemical Works*, 200 NLRB 1 (1972). See also *Excel Corp.*, 313 NLRB 588 (1993). This precedent was recently followed in *Laurelwood Care Center*, Case 6-RD-1561, in which on similar facts the Regional Director found the petitioner failed to meet his burden of establishing an adequate and timely showing of interest, and the Board denied review of the Regional Director's consequent dismissal of the petition.

Applying this precedent to the facts of this case, the Petitioner was required to provide an adequate and sufficient showing of interest, from at least 30 percent of the eligible employees (NLRB Statements of Procedure Section 101.18(a)), by, at the very latest, March 30. My administrative review of the showing of interest presented by the Petitioner reveals that as of March 30, the petition was not supported by the required percentage of employees. Accordingly, I am dismissing the petition based on the Petitioner's failure to establish timely an adequate showing of interest.

Right to Request Review: Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by FILING AN APPEAL WITH THE EXECUTIVE SECRETARY, of the National Labor Relations Board, Franklin Court Building, 1099 14th Street, NW, Room 8820, Washington, D.C. 20570-0001, AND A COPY WITH ME. A copy of such request for review must be served on me and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and the reasons upon which it is based. The request for review (eight copies) must be received by the EXECUTIVE SECRETARY of the Board in Washington, D.C. by the close of business at 5:00 p.m. EDT on May 3, 2006. The request for review MAY NOT be filed by facsimile transmission. Upon good cause shown, however, the BOARD may grant special permission for a longer period within which to file. Requests for extension of time MAY

be filed by facsimile transmission, and must be received no later than the time set above for the filing of the request for review. A copy of any such request for extension of time should be submitted to the Executive Secretary of the Board in Washington, DC, and a copy of any such request for extension of time should be submitted to me and to each of the other parties to this proceeding. If you mail the request for review, it should be postmarked no later than one day before the due date set forth above.

The request for review and any request for extension of time for filing must include a statement that a copy has been served on me and on each of the other parties to this proceeding, and a copy must be served in the same or faster manner as that utilized for filing the request with the Board. When filing with the Board is accomplished by personal service, however, the other parties shall be promptly notified of such action by telephone followed by service of a copy by mail or telefax.

Very truly yours,

Wayne R. Gold
Regional Director

Enclosures

cc: Executive Secretary
National Labor Relations Board
Office of Appeals, Room 8820
Franklin Court Building
1099 14th Street, NW
Washington, DC 20570

Mr. Christine Stefanides, CEO
Civista Health
701 East Charles Street
Laplata, MD 20646

Service Employees International Union, (SEIU)
1313 L Street, NW
Washington, DC 20005

Ms. Christina O. Apeboyejo
3304 Swift Place
Waldorf, MD 20601

Service Employees International Union,
Local 1199
611 N. Eutaw Street
Baltimore, MD 21211

Pamela Jeffrey Esq.
Levy Ratner, P.C.
80 Eighth Avenue
New York, NY 10011-5126

Gary L. Simpler Esq.
Shawe Rosenthal LLP
20 S. Charles Street, 11th Floor
Baltimore, MD 21201